

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC

DEBTOR

CASE NO. 10-93904
CHAPTER 11

**NOTICE OF FILING OF OBJECTION
IN FRIONA ADVERSARY PROCEEDING CASE NO. 11-59093**

Come the Claimants and Parties in interest East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., Southeast Livestock Exchange, LLC, Alton Darnell, Bluegrass Stockyards, LLC, Bluegrass South Livestock Market, LLC, Bluegrass Stockyards East, LLC, Bluegrass Stockyards of Campbellsville, LLC, and Bluegrass-Maysville Stockyards, LLC, (collectively the "Cattle Producers"), by counsel, and hereby give Notice of their attached Objection to Cactus Motion for Summary Judgment against Robert Nichols et.al., filed in the Friona Industries Adversary Proceeding Case No. 11-59093.

Respectfully submitted,

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I hereby certify that on November 29, 2011 a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on November 29, 2011, a copy of the foregoing Notice of Filing of Objection in Friona Adversary Proceeding Case No. 11-59093 was mailed by first-class U.S. mail, postage prepaid and properly addressed, to the following:

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COUNSEL FOR CATTLE PRODUCERS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC

CASE NO. 10-93904

DEBTOR

CHAPTER 11

FRIONA INDUSTRIES, L.P.

PLAINTIFF

v.

Adv. Proc. No. 11-59093

EASTERN LIVESTOCK CO., LLC, *et al.*

DEFENDANTS and
INTERVENING DEFENDANTS

and

CACTUS GROWERS, INC.

INTERVENING PLAINTIFF

v.

EASTERN LIVESTOCK CO., LLC, *et al.*

DEFENDANTS and
INTERVENING DEFENDANTS

and

J & F OKLAHOMA HOLDINGS, INC.

INTERVENING PLAINTIFF

v.

EASTERN LIVESTOCK CO., LLC, *et al.*

DEFENDANTS and
INTERVENING DEFENDANTS

**OBJECTION TO CACTUS GROWERS, INC. MOTION FOR
SUMMARY JUDGMENT AGAINST ROBERT NICHOLS ET AL.**

Come the Defendants, Cross-Claimants and Counter-Claimants East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., Southeast Livestock Exchange, LLC, Alton Darnell, Blue Grass Stockyards, LLC, Blue Grass South

Livestock Market, LLC, Blue Grass Stockyards East, LLC, Blue Grass Stockyards of Campbellsville, LLC, and Blue Grass-Maysville Stockyards, LLC (collectively “Cattle Producers”), by counsel, and hereby object to the Cactus Motion for Summary Judgment against Robert Nichols et al. [ECF No. 263-266] as follows:

1. None of the parties in the Friona Adversary Proceeding were placed on notice of the five (5) depositions taken on September 20, 2011 which are filed in support of the Cactus Summary Judgment Motion. Because of the lack of notice, the depositions can not be admitted and improperly support the Motion for Summary Judgment. The Motion must be denied.

2. Despite the voluminous papers which appear to be primarily about one single transaction involving 125 steers delivered to Cactus’ feedlot by Mr. Nichols, certain of the requested “summary judgment” relief pertains to hotly contested “global issues” which are not yet ripe for adjudication and which are crucial to numerous parties in interest, in this adversary proceeding as well as outside of this adversary proceeding.

3. Specifically, the Cactus Motion for Summary Judgment against Mr. Nichols regarding the 125 steers also asks for a summary judgment, as a matter of law, among other requests:

- (i) that the funds interpled by Cactus constitute a “payable to Eastern Livestock...”
- (ii) that the lien of Fifth Third Bank attached to Eastern Livestock’s interest in the cattle as well as the proceeds of the cattle, subject only to Cactus’ offset, recoupments, and down payment claim; and
- (iii) that the 125 steers and all proceeds or receivables therefrom are a part of Eastern’s bankruptcy estate.

See ECF No. 263, pp 22-23, Prayers for Relief (k), (q) and (r).

4. While the undersigned does not object to findings of fact with regard to these particular 125 steers in which these Cattle Producers have no interest, they certainly object to any

summary judgment with regard to the foregoing key legal issues which affect all parties not only in this adversary proceeding, but in every adversary proceeding as well as in the main case.

5. The lack of any “global issues process” continues to be a problem which has not been resolved. Appropriate notice must be given with respect to global legal issues which affect multiple parties in interest in these proceedings, in overlapping adversary proceedings, and in the main case.

WHEREFORE, the Cattle Producers object to the granting of Summary Judgment to Cactus in respect to the legal issues addressed herein, as pertains to certain ‘global issues’ for which other parties in interest were not given appropriate notice or opportunity to participate in discovery. Alternatively, the global legal issues must be placed on appropriate notice so that parties in interest affected thereby are given full notice, opportunity to object, and appropriate consideration by the Court on legal issues which affect multiple parties and not just Mr. Nichols’ 125 steer.

Respectfully submitted,

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I hereby certify that on November 29, 2011 a copy of the foregoing Objection to Cactus Growers, Inc.'s Motion for Summary Judgment Against Robert Nichols, et al. was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on November 29, 2011, a copy of the foregoing Objection to Cactus Growers, Inc.'s Motion for Summary Judgment Against Robert Nichols, et al. was mailed by first-class U.S. mail, postage prepaid and properly addressed, to the following:

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